

he had so retained to that amount; because, the absolute judgments against him were a tacit and conclusive admission, that he had assets sufficient to satisfy that as well as his own claim, which could only be satisfied by retainer in whole or in due proportion with others for which, suit might be brought. And since he made no defence on the ground of an insufficiency of assets to satisfy his own claim as well as that for which the suits were brought, those absolute judgments must be considered as alike conclusive evidence of a sufficiency of assets to satisfy both of them.

Whereupon it is *Ordered*, that the said petition be and the same is hereby dismissed with costs,

See this case, under the name of *Gaither & Warfield v. Welch's Estate*, reported in 3 G. & J. 259.

MACCUBBIN v. MATTHEWS.

A party may, as of course, withdraw any document, which he himself has voluntarily put upon file, for the purpose of having it authenticated.—Commissioners may summon a witness to attend before them; and the court will compel him to do so; but a commission should be issued so as to have the examination at a reasonable distance from the residence of the witness.

THIS bill was filed on the 26th of June, 1828, by *John Henry Maccubbin* against *Elizabeth Matthews, William D. Matthews, Mary E. Matthews, John E. Matthews, Jesse Matthews* and *John Hall*. It appeared, that the plaintiff had sold a parcel of land to *John Matthews*, the intestate of the defendant *Hall*, the late husband of the defendant *Elizabeth*, and the father of the other defendants, who were all infants; that the land described as lying within certain specified boundaries, was estimated to contain three hundred acres more or less; and was to be paid for at \$6 66 $\frac{2}{3}$ cents per acre; that upon that estimate, part of the purchase money was paid, and a bond given for the residue; and a bond of conveyance given by the vendor to the vendee; that afterwards a survey was made, and the tract was found to contain five hundred and thirty acres; that the bond given for the residue of the purchase money had been assigned to a certain *Nicholas Brice*, and was not then paid; and that the defendant *Hall*, as administrator, had taken possession of the effects of the intestate. Whereupon it was